IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHEASTERN DIVISION

Peter Grzeskowiak,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 02:06-cv-62
	)	
Susan Grzeskowiak/Coker,	)	
	)	
Defendant.	)	

REPORT AND RECOMMENDATION

Before the court is Peter Grzeskowiak's request to proceed *in forma pauperis* (IFP) for his appeal to the Eighth Circuit Court of Appeals (Doc. #29) For the following reasons, the magistrate judge **RECOMMENDS** that Grzeskowiak's request to proceed IFP be **DENIED**.

Under 28 U.S.C. § 1915(e)(2), a court may dismiss a case filed *in forma pauperis* at any time if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. Neitzke v. Williams, 490 U.S. 319, 325 (1989). In June 2006, the magistrate judge concluded that Grzeskowiak's complaint potentially stated a claim based on federal diversity jurisdiction (Doc. #2) and granted his request to file the complaint without payment of fees. In a November 13, 2006 order, the Honorable Ralph R. Erickson found that this court had no jurisdiction over Grzeskowiak's action (Doc. #26). Given the lack of subject matter jurisdiction, the magistrate judge **RECOMMENDS** that Grzeskowiak's motion to proceed IFP on appeal (Doc. #29) be **DENIED** because he fails to state a claim for which relief can be granted in federal court. The documents in this case also indicate that in Grzeskowiak's claims and his appeal could be

deemed "frivolous,"[1] so denial of IFP would be appropriate for that reason as well.

Pursuant to Local Rule 72.1(E)(4), any party may object to this recommendation within ten (10) days after being served with a copy.

Dated this 3rd day of January, 2007.

/s/ *Karen K. Klein*
Karen K. Klein
United States Magistrate Judge

[1]An action is deemed frivolous if "it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989). The court will find a complaint factually frivolous "when the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them." Denton v. Hernandez, 504 U.S. 25, 32-33 (1992).